IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5209 OF 2004

Gujarat Ambuja Cements Ltd. Petitioner

versus

Pimpri-Chinchwad Municipal Corporation & another Respondents

G.Hariharan, adv. for petitioner.
N.U.Walawalkar, adv. for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 27th October 2004

PC :

1. Rule.

2. Learned counsel for respondents waive service. By consent, petition is taken up for hearing.

3. Petitioner is a company registered under the Companies Act, 1956 and carries business of manufacturing and selling cement. First respondent is the Pimpri-Chinchwad Municipal Corporation established under the Bombay Provincial Municipal Corporations Act, 1949 and second respondent is the Assistant Municipal Corporation (Octroi) of first respondent. By

this petition petitioner is seeking to quash and set aside the orders passed by second respondent dated 23rd May 2003 and 31st January 2004 rejecting claim of petitioner for refund of security deposit solely on the ground that the application for refund was not filed within the time prescribed under Pimpri-Chinchwad Municipal Corporation Octroi Rules (hereinafter referred to as "Octroi Rules").

4. It appears that in December 2002 petitioner vide Challan Nos.R030219 and R030221 dispatched dutiable goods viz. 2 Roll Body and 2 Shafts for Segmented Roll Unit of Polycom respectively to M/s.Thyssen Krupp India, Pimpri, Pune for the purpose of reconditioning/ repairing. At the time of entry of the said goods namely 2 Roll Body and 2 Shafts in the Corporation limits, petitioner paid Rs.5,49,000/- and Rs.2,88,000/- as security deposit vide receipt Nos.200201DC002149 and 20201DC992173 respectively. Petitioner also filled in Form No.4 at the time of entry in the limits of Pimpri-Chinchwad Municipal Corporation. Petitioner after getting the equipments reconditioned, took out the same from the Municipal limits of respondent no.1. Petitioner complied with all the formalities like submitting

Form No.5A with all relevant factual details, which were duly verified, certified and authenticated by the Octroi Authorities. The Entry Officer accordingly allowed the equipments to move out of the municipal limits of respondents and issued statement to the petitioner of the deposit amount refundable.

5. Application for refund of deposit was to be made within one month. Petitioner through it's agent submitted application for refund of deposit on 24th March 2003. By that time period of one month had already expired. Respondent no.2 rejected the application of petitioner solely on the ground that the application was not filed within time. Petitioner preferred a fresh application and requested the respondent no.2 to review the case, however, respondent no.2 rejected that application. Both these orders are being impugned in the present petition.

6. The short question is whether respondents were right in rejecting application for refund on the ground that application was filed beyond period of limitation prescribed under Rule 28(2)(a) of the Octroi Rules. There is no dispute that the equipments which were brought were not sold or consumed in the local limits of

first respondent and the equipments were returned after reconditioning work was over and were moved out of octroi limits. The procedure as required by the rules was followed by the petitioner company. In Tata Engineering and Locomotive Company Ltd. and another Vs. The Municipal Corporation of the City of Thane and others reported in AIR-1992-SC-645 the Supreme Court considered provisions of the Bombay Provincial Municipal Corporations Act, 1949 and Octroi Rules framed under the Maharashtra Municipalities Act which are similar to the Octroi Rules framed by first respondent Corporation and held as follows:-

> "25. The ratio of the judgement clearly is that merely on the ground that the goods are not exported in bulk as originally imported, the levy does not become valid or that the importer two exported the goods loses his right to a refund of the octroi paid. The goods neither loose their identity nor cease to be identifiable. Once we reach the conclusion that there is no consumption or use, octroi is not attracted and if any levy has been made and the amount collected, the same becomes legally refundable even when the goods are exported in parts and in smaller packages. This is particularly so because in the case of goods not consumed or used within the octroi area but exported there is a constitutional bar for the levy of octroi."
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> "29. To sum up : Having regard to the nature and incidence of octroi unless

the octroiable goods are consumed or used or are meant to reach an ultimate user or consumer in the octroi area no octroi is leviable. The words ‘sale therein’ in the words "consumption, use or sale therein" in the definition of octroi means sale of octroiable goods to a person for the purpose of consumption or use by such person in the octroi area. If sale was intended for consumption or use in the octroi area whether the purchaser actually consumed inside or outside octroi area is irrelevant. Rules 24 to 30 and the forms in the system of levy of octroi are intended to regulate the procedure for collection, identification of dutiable goods and correlation of goods exported with the goods imported for the purpose of refunds of octroi collected. In view of constitutional bar, octroi is not leviable if the goods are not brought into the octroi area for purposes of consumption or use in the area but for export and in fact exported by the importer himself or the sale by him occasions the export. Compliance with the procedure prescribed in the Rules for filing claims of refunds are not conditions precedent for the right or eligibility for refund or the liability to refund but are provisions regarding proof of export of the goods imported and are not meant to be exhaustive either. They are to be interpreted and understood in that sense. The object of the Rules fixing a period of limitation for export however is different. The export cannot be put in perpetual doubt and the goods may be considered to have come to a repose if they were not exported within a particular period provided in the rules. Applying these principles to the instant case, on facts the rejection of refund applications on the ground that Rule 25(3)(d) had not been complied with was illegal. Since the rejection of the claims for refund was merely on the ground that either Form 4 and original invoices were not produced or columns 5 and 6 of Form 11 or the corresponding columns in Form 12 had not been filled with reference to an original invoice or Form 4 or deposit receipt and the refusal to issue export pass

> certificates on those very grounds which we have stated are untenable the other orders of rejections are also invalid. If the goods are mixed up and unidentifiable due to breaking bulk and repacking in smaller and asserted packages before export the principle that the first export was of the goods first imported, subject to any evidence available to the contrary may be applied and the six months period prescribed for export may be determined accordingly."

7. In the light of above decision of Supreme Court it is clear that the application for refund cannot be rejected on the ground of non compliance with the rules. Respondent no.2 was thus clearly in error in rejecting the petitioner’s application for refund solely on the ground that the application was filed beyond limitation prescribed. Therefore, we quash and set aside the orders of respondent no.2 dated 23rd May 2003 and 31st January 2004. Respondent no.2 is directed to consider application of the petitioner afresh on merits without raising objection of limitation and pass appropriate order within a period of eight weeks from today. Rule is made absolute accordingly.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)